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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,049	07/30/2001	Julie A. Raye	KCC4711.1	9824
321	7590	07/31/2006	EXAMINER	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			HAQ, NAEEM U	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/918,049

Applicant(s)

RAYE ET AL.

Examiner

Naeem Haq

Art Unit

3625

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ They raise the issue of new matter (see NOTE below);
 - (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

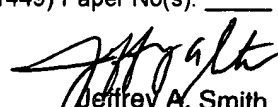
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply ^{upon entry of appeal will} has overcome the following rejection(s): 35 USC 112, first paragraph rejection of claim 58.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-13, 15-31, 45, 48-52 and 57.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.


Jeffrey A. Smith
Primary Examiner

SPE AU 3625

Continuation of 13. Other:

Applicants' Amendment C filed on June 26, 2006 cancelled claim 58 in order to overcome the rejection of this claim under 35 USC 112, first paragraph. All other claims remain unchanged. Applicants' arguments with respect to the rejection of claims 1-3, 6-8, 10, 11, 15, 17-21, 23-27, 30, 31, 45, 48-52, and 57 under 35 USC 103(a) have been considered, but they are not persuasive. The Applicants have argued that the Examiner's treatment of the limitation "...for products corresponding to the determined assortment of feminine care products" as non-functional descriptive matter is improper for a variety of reasons. The Examiner respectfully disagrees. Claim 1 has three distinct steps: a first step for determining an assortment of feminine care products, a second step for accepting a purchase order, and a third step for prompting a user. The prompting step itself, whether performed manually or via a computer system, involves nothing more than displaying text or some other visual cue to the user. It is this text or visual cue which the Examiner has treated as non-functional language because it has no functional relationship to the previous steps. The Applicants have argued that the limitation "...the determined assortment..." carries a functional relationship because it is tied to the rest of the claim. The Examiner disagrees because the prompting step merely displays text or some other visual cue to the user. Hartman, the prior art cited by the Examiner, also prompts the user after completing a transaction. Thus, the difference between the prior art and the Applicants' invention lies within the prompt itself (i.e. text or a visual cue). The Examiner treats this as non-functional descriptive matter because it is merely reinforcing a concept in the mind of the user. The Applicants have also argued that non-functional descriptive matter is primarily applicable to data structures and computer programs, neither of which are recited in claim 1. The Examiner respectfully disagrees. Non-functional descriptive matter has been applied in the mechanical arts as well as the computer arts. Thus non-functional descriptive matter has been applied across multiple classes of statutory inventions. Furthermore, the Applicants have provided no justification why the reasoning and logic of non-functional descriptive matter should be limited to a particular statutory class of invention when it in fact has been applied across multiple classes of statutory inventions. For these reasons, the Examiner maintains the art rejection.